

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	4:02CR3172
)	
Plaintiff,)	
)	
vs.)	MEMORANDUM
)	AND ORDER
BENITA CASARES,)	
)	
Defendant.)	

The defendant has filed a pro se motion (filing 51) to compel specific performance of a plea agreement. The motion is supported by an index of documents. (Filing 52.) The motion may have merit.

The Assistant United States Attorney handling this case has admitted that the defendant entered into a cooperation agreement and, pursuant to that agreement, performed at least one controlled purchase at the direction of the government. (Filing 52, Exhibit IV.)¹ Furthermore, the defendant describes an intense and harrowing experience when successfully completing the “buy” for the government. (Filing 51, at 4-5.) According to the defendant, the seller was affirmatively identified to the government both by visual observation and through the production of his cell phone to the government. To my mind, this raises the question of whether a controlled purchase of this type is alone “substantial assistance” even though no prosecution may have resulted from it and the government believes that the defendant’s assistance was not otherwise substantial.

Therefore,

¹The government apparently also admits (filing 52, Exhibits I & IV) that the defendant gave multiple statements to investigators implicating others, but the government claims those statements provided no significant assistance.

IT IS ORDERED that:

1. The Federal Public Defender shall see to the appointment of counsel for Benita Casares. Counsel shall then enter his or appearance in this case and represent Ms. Casares.² My chambers shall monitor this matter to see to it that counsel is appointed in a timely manner.
2. The United States shall file a response to Ms. Casares' motion no later than January 13, 2006.
3. Ms. Casares, through her counsel, shall then submit a reply to the government's submission no later than February 13, 2006.
4. My chambers shall call this case to my attention on February 14, 2006. At that time, I will determine whether a hearing is required.

December 12, 2005.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge

²Mr. Stoler was appointed to represent the defendant in the original case. I would be pleased to have him represent the defendant in this matter as well.